

APPEAL NO. 020973
FILED JUNE 5, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 22, 2002. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) compensable injury of _____, does not extend to her cervical spine and that the claimant's impairment rating (IR) is 4%. The claimant appealed and the respondent (carrier) responded.

DECISION

As reformed herein, the hearing officer's decision is affirmed.

Conflicting evidence was presented with regard to the issue of whether the compensable injury extended to the cervical spine. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determination that the compensable injury does not extend to the cervical spine is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Conflicting evidence was also presented on the IR issue. The claimant's treating doctor assigned a 10% IR, which included impairment for the right upper extremity and the cervical region. The carrier's required medical examination doctor assigned a 2% IR, which was for the right wrist only. The designated doctor chosen by the Texas Workers' Compensation Commission (Commission) assigned a 10% IR, which included 6% for loss of cervical range of motion (ROM) and 4% for loss of right upper extremity ROM.

For a claim for workers' compensation benefits based on a compensable injury that occurs before June 17, 2001, Section 408.125(e) provides that if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. While the designated doctor's opinion has presumptive weight with regard to the IR, his opinion as to the extent of the compensable injury does not have presumptive weight. Texas Workers' Compensation Commission Appeal No. 93290, decided June 1, 1993, and Texas Workers' Compensation Commission Appeal No. 94311, decided May 2, 1994. Since the cervical spine has been determined not to be part of the compensable injury, it should not have been assigned any impairment, and the hearing officer did not err in determining that the claimant's IR consists of the impairment the designated doctor assigned for the compensable right upper extremity injury. Texas Workers' Compensation Commission Appeal No. 941732, decided January 31, 1995. We conclude that the hearing officer's determination that the claimant's IR for the compensable injury is 4% is supported by sufficient evidence and that it is not so

against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

The hearing officer incorrectly states in the decision that the parties stipulated that the claimant reached maximum medical improvement (MMI) on October 7, 2001, because no stipulation as to MMI was made at the CCH. The benefit review conference (BRC) report reflects that the parties agreed that the claimant reached MMI on September 7, 2001, which is the date that the designated doctor certified that the claimant reached MMI. We reform the hearing officer's decision to reflect in the stipulations section that the parties agreed at the BRC that the claimant reached MMI on September 7, 2001, and we reform Conclusion of Law No. 3 and the hearing officer's Decision to reflect that the claimant reached MMI on September 7, 2001.

The hearing officer's decision and order, as reformed herein, are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge